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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,891	03/08/2004	Ryan Cameron Lakin	14977-0006	1521
25267	7590	06/02/2008		
BOSE MCKINNEY & EVANS LLP			EXAMINER	
2700 FIRST INDIANA PLAZA			HOFTMAN, MARY C	
135 NORTH PENNSYLVANIA			ART UNIT	PAPER NUMBER
INDIANAPOLIS, IN 46204			3733	
		MAIL DATE	DELIVERY MODE	
		06/02/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,891	<b>Applicant(s)</b> LAKIN ET AL.
	<b>Examiner</b> MARY HOFFMAN	<b>Art Unit</b> 3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 October 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12,16-34,36-42 and 60-73 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12,16-34,36-42 and 60-73 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 17 October 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-42 and 60-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duvillier et al. (U.S. Patent No. 5,749,876)

Duvillier et al. disclose a system (see, e.g. FIG. 2, 3) for cutting a bone at a desired location, a cutting block having a frame, a first guide adjustably connected to the frame, a first adjustor connected to the frame, and a first mounting location defined by the frame and configured to attach to the bone at the target location, the first guide defining a first cutting path having a position, the position of the first cutting path relative to the first mounting location being adjustable using a grip of the first adjustor. The cutting block frame includes a plurality of channels configured to support the first guide and accommodate movement of the first guide during adjustment of the first cutting path. The first guide includes a pair of substantially parallel guide walls extending between a pair of end portions, the guide walls and the end portions defining the first cutting path. The first mounting location includes a bore defined by the frame. The frame defines a second mounting location, the first mounting location and the second mounting location being located on an attachment wall of the frame. The frame further includes a mounting plate coupled to the frame to accommodate linear adjustment of

the position of the first cutting path. The mounting plate is further configured to accommodate angular adjustment of the first cutting path. The mounting plate includes an arcuate channel for supporting a post connected to the first guide, the arcuate channel defining a path of angular adjustment of the first cutting path. The cutting block further includes a second guide defining a second cutting path having a position, the position of the second cutting path relative to the first mounting location being adjustable. The position of the second cutting path relative to the first mounting location is adjustable using a second grip of the first adjustor. Use of the second grip causes linear adjustment of the position of the second cutting path. The cutting block further includes a second adjustor having a grip, use of the second adjustor grip causing angular adjustment of the position of the second cutting path. The position of the second cutting path relative to the first mounting location is adjustable using a grip of a second adjustor. The frame includes a first end wall, a second end wall, a first sidewall extending between the end walls, and a second sidewall extending between the end walls. The first guide is connected between the sidewalls adjacent the first end wall. The cutting block further includes a second guide defining a second cutting path, the second guide being adjustably connected to the frame between the sidewalls. The cutting block further includes a third guide defining a third cutting path, the third guide being adjustably connected to the frame between the sidewalls. The cutting block further includes a fourth guide defining a fourth cutting path, the fourth guide being adjustably connected to the frame between the side walls adjacent the second end wall. The second guide and the third guide are positioned between the first guide and the fourth

guide. The second guide is positioned between the first guide and the first mounting location and the third guide is positioned between the fourth guide and the first mounting location. The position of first guide is adjustable linearly relative to the first mounting location using the first adjustor. The cutting block further includes a second adjustor, a third adjustor, and a fourth adjustor, the first guide and the second guide being adjustable linearly relative to the first mounting location using the first adjustor, the second guide being adjustable angularly relative to the first mounting location using the second adjustor, the third guide and the fourth guide being adjustable linearly relative to the first mounting location using the third adjustor, and the third guide being adjustable angularly relative to the first mounting location using the fourth adjustor.

Duvillier et al. disclose the claimed invention except for a drill cylinder having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and tracking instruments.

Kienzle, III et al. disclose a drill cylinder (FIG. 1) having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and tracking instruments for accurate positioning of a drill in a body part (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the system of Duvillier et al including a drill cylinder having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and

tracking instruments in view of Kienzle, III, et al. for accurate positioning of a drill in a body part.

***Response to Arguments***

Applicant's arguments filed 10/17/2007 have been fully considered but they are not persuasive. Applicant argues that the device of Duvillier et al does not include a first guide defining a first cutting path having a position, the position of the first cutting path relative to the first mounting location being adjustable linearly using a grip of the first adjustor and a second guide defining a second cutting path having a position, the position of the second cutting path relative to the first mounting location being adjustable angularly using a grip of the second adjustor. The examiner respectfully disagrees. Duvillier discloses a first guide defining a first cutting path having a position, the position of the first cutting path relative to the first mounting location being adjustable linearly using a grip of the first adjustor and a second guide defining a second cutting path having a position, the position of the second cutting path relative to the first mounting location being adjustable angularly using a grip of the second adjustor (e.g., see the marked up figure below).

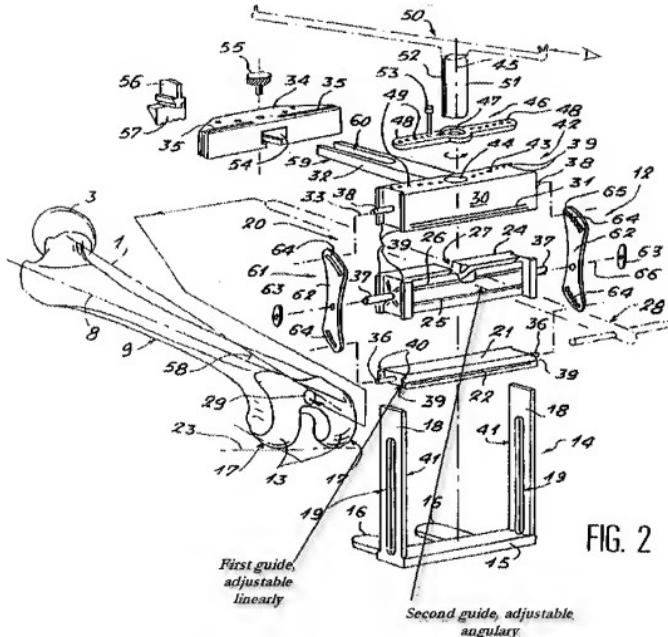
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Also, in FIG. 2A, components ref. #30 and 205 appear angularly adjustable.

The rejections are deemed proper.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is (571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733